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The Birth, Life, and Death of Policy Instruments: 35 Years of EU Gender-Equality Policy Programs

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Policy-instruments research is an essential part of studying European Union governance. A growing interest in processes of (de)legalisation and patterns of instrument choice require a more process- and context-oriented analysis of the EU's instrument selection. Using a political sociology approach, the article analyses patterns of instrument choice in soft-law policy programs by examining the life cycle of EU gender-equality policy programs from 1982 to today. Gender-equality policy programs offer an in-depth understanding of how the Commission upgrades and downgrades policy instruments. The analysis indicates that patterns of policy-instrument choice do not necessarily stick once a policy instrument is selected. Instead, patterns vary while the instrument is (de)legalised. Investigating gender-equality policy programs provides explanations for the shifts in the use of legislative instruments and their limitations.

Keywords: policy instruments; European integration; soft law; gender equality; policy programs

Introduction

Governing a multilevel system such as the European Union (EU) has led to the development of a broad variety of policy instruments in both hard and soft law. Soft law instruments are the core feature of the new modes of governance in the EU and have evolved adjacent to the original 'Community Method' (Héritier and Rhodes 2011; Jordan and Schout 2006). Research supports the perspective that this soft law emerged as a way of avoiding hard law because it is perceived as less restrictive (Zehavi 2012). The possible impact of soft law and its policy instruments should nevertheless not be underestimated, and supranational institutions have come to acknowledge its power. By

approving the Barroso Commission in 2010, the European Parliament (EP) insisted on strengthening its role in soft legislation by forcing the European Commission to consult the EP before adopting soft law in certain cases.[1]

The EU's choice of policy instrument is rarely simply functional, and thus analysing it requires examining decision-making, policy change, and actors' interactions (Kassim and Le Galès 2010), which allows for a more process- and context-oriented analysis. Terpan provides several examples of this, illustrating how norms in European integration were subject to legalisation, in other words, how they were upgraded from either a non-legal norm to a soft/hard law or from a soft to a hard law (2015: 95). For the reverse process of downgrading norms, which he labels 'delegalisation', Terpan provides examples of hard law turning soft, yet he states that in EU law there has been no delegalisation in the form of soft or hard law turning into non-legal norms (ibid.). In this article, I challenge the latter claim through an example of a soft law delegalised to a non-legal norm by following the life cycle of EU gender-equality policy programs from 1982 to today, with 2016 marking the end of this particular policy instrument's soft law version.

I follow Terpan (2015) in that I believe the continuing process of European integration requires policy-instrument research to take in a temporal perspective to better grasp 'how EU policy originates, how it develops, and with what consequences' (Kassim and Le Galès 2010: 2). Aside from reviewing processes of policy-instrument (de)legalisation from a life-cycle perspective, I will also study patterns of policy-instrument choice. To do this, I apply Capanos and Lippi's (2017) analytical framework of four instrument-selection patterns – hybridisation, stratification, contamination,

[1] Cf. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0009+0+DOC+XML+V0//EN (9/0/2016).

routinisation – to Terpan's (2015) distinction between legalisation and delegalisation using the case of EU gender-equality policy programs. I ultimately suggest that, once a policy instrument is chosen, the pattern of policy-instrument selection does not necessarily stick but is subject to change depending on the policy-making context, with different patterns occurring at different times.

Using a political sociology approach, as suggested by Lascoumes and Le Galès (2007), this article analyses patterns of instrument choice in soft-law policy programs. These programs are important because they are connected with funding and designed to promote a certain policy goal. Following Lascoumes and Le Galès (2007: 8), this article aims to 'show how instruments – a particular type of institution – structure or influence public policy'. Furthermore:

> [Instruments] determine the way in which actors are going to behave; they create uncertainties about the effects of the balance of power; they will eventually privilege certain actors and interests and exclude others; they constrain the actors while offering them possibilities; they drive forward a certain representation of problems. The social and political actors therefore have capacities for action that differ widely according to the instrument chosen. (Lascoumes and Le Galès 2007: 9)

I examine the only policy domain where the EU reached higher standards than the lowest common denominator, gender-equality policy (Hix 2005). When this EU-induced change in social policy caused growing costs (Van der Vleuten 2007), support for hard law diminished and the European Commission turned to soft law at the beginning of the 1980s (Ahrens 2018). This shift from hard to soft law occurred in the form of policy programs. An in-depth analysis of these gender-equality programs highlights policy instruments that have not received full attention in literature: policy programs as institutionalized soft-law instruments.

Gender-equality programs offer an in-depth understanding of how the Commission upgrades and downgrades – or, in Terpan's (2015) terminology, legalises and delegalises – policy instruments. Beginning in 1982, the Commission performed a limited legalisation of gender-equality programs, which helped institutionalise them as an important element of EU gender-equality policy for roughly a quarter century (Ahrens 2018, Jacquot 2015). In 2006, the Commission then started delegalising the programs, first in part and then further by turning to a non-legal norm in 2016. The fact that the Commission might use its agenda-setting power to disarm a previously successful instrument goes against most EU-integration research; disarming instruments is an unusual act for the Commission (Terpan 2015).

This article starts by considering the relevance of soft law and the role of policy programs as policy instruments. Next, I build on Terpan (2015) to illustrate the (de)legalisation processes of gender-equality policy programs between 1982 and 2016. Using Capano and Lippi's (2017) analytical framework, I then provide a process- and context-oriented analysis of policy instrument choice. Finally, I discuss what the (de)legalisation process tells us about power relations in EU decision-making.

EU Soft Law, Policy Instruments and Programs

While supranational institutions have used hard law as their main tool to harmonise member-state policies, soft law has become an equally important mode of EU governance (Hooghe and Marks 2001; Sandholtz and Stone Sweet 1998). Its specific features are: involving public and private actors in the policy process; emphasising agreement between a variety of actors; allowing national diversity in a consensus-oriented process; and speaking to cognition through benchmarking, mutual learning, and best-practice exchange (Jacquot 2010). As in previous research on hard law, scholars have studied soft law's implementation, impact, and function in the context of

'new governance' (Jordan et al. 2005; Kohler-Koch and Eising 1999). The European Commission turned to soft law when hard law became more difficult to adopt due to the member states' reluctance (Héritier 1999; Saurugger and Terpan 2016). Soft-law measures thus enabled the Commission to foster incremental alignments in certain policy fields that might later result in hard law (Ahrens and van der Vleuten 2018; Héritier 2003). The Open Method of Coordination (OMC), first established in employment policy and subsequently extended to pensions, social inclusion, health, and long-term care, has been the best-known and also best-researched soft-law instrument (Kröger 2009; Trubek and Trubek 2005).

Yet some of the EU's commonest soft-law instruments are often overlooked: policy programs. These can be defined as a plan of action that is aimed at accomplishing a political objective and includes details on what work is to be done, by whom, when, and what means or resources will be used. In similar ways as it used the OMC, the European Commission utilized recurrent programs as instruments to reduce (structural) differences between member states and initiate transnational collaboration and mutual learning. As these policy programs usually bundle a range of other instruments such as projects, campaigns, resolutions, and so on, they are best considered a 'meta-instrument' (Radaelli and Meuwese 2010).

Policy programs are particularly common in social and structural policies – the European Social Fund (ESF), for instance, or the European Structural and Investment Funds (ESIF) more generally; or, in research and education policy, the Framework Programs (now Horizon 2020) and Erasmus – and can be found in a range of other policy fields, see examples like the EU Health Program, the Europe for Citizens Program, or Europe's Program for Small and Medium-sized Enterprises (COSME).

Even though the EU uses the term program for all of them, the legal forms the EU uses to adopt them can range from regulations to staff working documents.

Lascoumes and Le Galès (2007) illuminated how instruments can become disconnected from political goals and even be changed without prior agreement. Investigating policy programs thus provides explanations for the shifts in use of legislative instruments and illustrates how the same instrument can be enacted through different legal forms with differently binding scopes over time. Radaelli and Meuwese (2010) have furthermore argued that instruments are often strategically chosen to circumvent contested policy issues, as it is easier to change the procedures of policy formulation than to solve disagreements. In this regard, gender-equality policy is a salient case, with the member states' diverging policy goals making agreement on hard law very unlikely (Jacquot 2015), particularly as hard law proves to be costly (Van der Vleuten 2007) and causes conflicts between the Council and EP (Ahrens and Abels 2017; Kluger Dionigi 2017). Because instruments are more often chosen for their fit with institutional routines and less for their ability to fulfil policy goals, instruments also tell us something about decision-making itself (Lascoumes and Le Galès 2007; Kassim and Le Galès 2010). In line with Radaelli and Meuwese (2010), Kassim and Le Galès (2010: 4) highlight the role of power in choosing policy instruments, and they thus speak of 'instruments as institutions that may need to be brought into existence, constructed or composed rather than readily available objects'. In terms of their direct supranational impact on member states, EU gender-equality programs rank particularly high on the list of measures available to the EU, although they were rarely acknowledged as such (Jacquot 2015; Hoskyns 2000).

(De)Legalisation of Gender-equality Programs

EU gender-equality policy developed 'in a piecemeal, somewhat organic fashion'

(Beveridge and Velluti 2008: 2). In terms of hard law, ten directives were adopted, justified by Article 119 (equal pay for work of equal value). These had a great impact on member states' social policy and often put them into a pincer, leading to advanced legislation (Van der Vleuten 2007). Hard law was then followed by soft law in the form of gender-equality programs from the beginning of the 1980s onwards, and in the form of gender mainstreaming in the mid-1990s (Ahrens 2018; Jacquot 2015). Gender-equality programs took the place of hard law as the EU's main policy instrument, and the Commission employed them to extend its area of influence and synchronize member states' policies further. These gender-equality programs were also an ideal type of 'interactive policy-making' (Torfing and Triantafillou 2011: 4), initiating networking among member states' governmental bodies, social partners, and non-governmental organisations (NGOs). They promoted gender equality on topics that were unusual to most member states at the time, such as supporting female employment in tech fields (Abels and Mushaben 2012). Policy programs were 'powerful instruments for policy innovation' (Abels and Mushaben 2012: 7) and unfolded their potential through developing legislative proposals as well as providing project and research funding (Hoskyns 2000).

In 2010, the policy domain for gender equality and its programmes changed due to its move from social policy in DG Employment to the human-rights and anti-discrimination portfolio of DG Justice. The precise impact of this institutional relocation on the policy programs is hard to detect, as the programs continued with similar topics and the following analysis shows that the delegalisation of programs already started in DG Employment.

Gender-equality programs and the accompanying policy documents provided the data for this article. This includes policy documents from the Commission, Council, and

Parliament, as well as from other stakeholders like trade unions and civil society organisations. I relied on these primary sources to analyse different political positions, changes in policy topics, and the process of policy-making. This analysis was then complemented by 1) an analysis of secondary case studies, and 2) expert interviews from 2008 on two of the gender-equality programs. The expert interviews were used for a qualitative in-depth study of policy programs as soft-law tools (Ahrens 2018).

Before applying Capano and Lippi's typology to the life cycle of gender-equality programs, I provide an overview of all programs and the ways their legal form changed over time. I here build on Terpan's characterisation of legal orders as being located along a continuum between non-legal norms and legally binding and judicially controlled commitments (2015: 70). Terpan's typology of EU norms covers three types: hard law, soft law, and non-legal norms (2015: 77). In his typology, gender-equality programs qualify as soft obligation/soft enforcement, since they – like the OMC – consist of crucial procedural elements[2]: a timeline for achieving their goals, indicators and best practices, measures targeting member states, monitoring, evaluation, and exchange measures for mutual learning (2015: 81).

Gender-equality programs are a typical product of the EU's policy-making process and can be seen as indicators of the ways the choice of legislative form affects political goals. Policy programs are one of the best-institutionalised soft-law instruments of EU gender-equality policy (Ahrens 2018), even though in 2016 they were fully delegalized to a non-legal norm. In the period covered in this article, eight programs were adopted, each continuously changing in their time span, legal form, and consequences for processes of integration, as illustrated in Table 1.

[2] The last two elements have disappeared step by step since 2006.

Table 1. Overview of Gender-equality Policy Programs
[Table 1 near here]

Source: Compiled by author.

The listed legal forms – Commission communication, Council resolution, Council decision, and Commission staff working document – differ in their levels of authority. Commission communications convey political goals and future policy plans to other actors, and are the commonest way of declaring the Commission's position. They are often used in policy areas without full supranational competencies or when there is no opportunity to propose hard law. Contrary to hard law and to Council resolutions or decisions, it is not necessary for any other institution to agree with a communication, and no other institution can change the communication' text. Similarly to Commission communications, Council resolutions define future work in a specific policy area. Though resolutions have no legal effect, they are used to, for instance, prepare the Commission's potential legislative proposals and actions. The Council can also adopt decisions, often relying on Commission proposals to do so. There are two types of such decisions: legislative acts, such as the Ordinary Legislative Procedure, and non-legislative acts, which include the gender-equality programs of 1995-2000 and 2001-2005 (See Table 1). These decisions are binding and go beyond stating policy goals or declaring plans for future work. Commission staff working documents, the last legal form listed here, are internal documents and therefore not official legal instruments; some are not even publicly available as they only serve internal purposes.

Regardless of the legal form, all programs except the last one were adopted in the Commissioners' College and were therefore official Commission positions and policies. Following the programs' adoption in the Commission, other European

institutions such as the EP or the Council receive the policy program document via standardised formal procedures. Subsequently, the institutions initiate a so-called ordinary legislative procedure or adopt a common opinion or resolution on the program.

Comparing the adopted texts of the gender-equality programs shows that they can be understood as an unbroken chain. Each text highlights – in typical 'Euro-speak' (Diez 2001) – the previous policy program, or sometimes even the whole preceding chain of them, as a point of reference for the new program design. The context-related changes are further illustrated below, but the programs also to some extent have structural elements and content in common. The European Commission presents the collection of gender-equality programs as an integral part of steering gender-equality policy, and the whole process is paradigmatic of how gender-equality programs became an institution, an institution that – just like other policy instruments – needed to be brought into existence, needed to be constructed, and needed to be composed rather than emerge fully fledged (Kassim and Le Galès 2010). The (re)actions of other EU institutions show that this perception of gender-equality programs as an institution is widely shared. Parliament, the Council, and civil-society organisations like the European Women's Lobby often publicly called upon the Commission to propose a new gender-equality program and continue to do so today (Ahrens 2018; Hoskyns 2000).

Looking at the programs' life cycle in Table 1 above, it is important to note how (de)legalisation and consolidation, in other words path-dependency, alternate. After selecting a new legal form, the Commission sticks to it for at least another program term before changing it again. Nevertheless, the progression of gender-equality programs confirms the literature on policy instrumentation, which stipulates that once an instrument is selected, a change to a completely different instrument such as a directive becomes unlikely (Kassim and Le Galès 2010; Terpan 2015; Zahevi 2012). Despite the

unbroken, path-dependent chain of policy programs, there are major differences between the integration processes of these programs. While the programs followed a progressive line in which legalisation alternated with consolidation until 2005, the Commission has started delegalising them since. In the following sections, I will provide a process- and context-oriented analysis of the reasons behind these legalisation, delegalisation, and consolidation processes in terms of Capano and Lippi's four selection patterns (2017).

The life cycle of EU gender-equality programs

The label for the policy instrument (gender-equality policy program) remained the same, while the programs' legal form changed over time. And they not only differed in their legal form (cf. Table 1), but also in their topics, policy approach, scope, and the actors involved. These changes can only be understood in the context of each program's adoption. Together with their legal form, the extent to which the programs were obligatory changed too, and this not only determined their policy scope, but also how actors behaved in relation to the programs, who was allowed to participate, and who was excluded at which point in time. When examined closely, it becomes clear that the Commission used and transformed the same policy instrument until it could no longer uphold the same legal form due to the changing context and competing policy instruments. In the following sections, I examine the choice of policy instrument in this context of policy- and decision-making and their path-dependency.

Capano and Lippi's typology (2017) offers a fruitful perspective to understand when, how, and why policy instruments are selected. They also tackle the important question of how decision-makers choose certain policy instruments over others. Establishing legitimacy is key to policy-instrument choice, because a lack of legitimacy might undermine citizens' acceptance of political decisions (Salomon 2002; March and

Olsen 2006), so decision-makers search for external confirmation for their choices (Le Galès and Lascoumes 2007). According to Capano and Lippi (2017: 276), legitimacy can be either internal or external. For internal legitimacy, policy-makers build on existing values and norms, on their daily practices or the existing legal framework in the policy field at hand; if the policy instrument is accepted by insiders, it does not have to be externally justified (Capano and Lippi 2017: 277). For external legitimacy, the instrument choice builds on an appealing use of the instrument in another policy sector or context.

Capano and Lippi (2017) characterize instrumentality as the second major driver of instrument choice, meaning that instruments are chosen due to their effectiveness and problem-solving capacity. In other words, policy-makers need to consider the policy instrument "useful and effective in achieving given ends" (ibid.). Capano and Lippi distinguish between instrumentality that is "generic" – elastic and unspecific – and "specific" – clearly defined; the former is closer to soft law, the latter closer to hard law.

By reflecting on the main factors at work in instrument choice – internal and external legitimacy (following the logic of appropriateness) and specialized and generic instrumentality (following the logic of consequence) – and how these are subjectively perceived by decision-makers, Capano and Lippi cross-tabulate the four factors to propose four specific patterns of instrument choice: routinisation, hybridisation, contamination, and stratification (2017: 271).

Routinisation (internal/specific) means cyclically adopting the same instrument without any changes. Instrument choice here is path-dependent, and alternatives either do not exist or are not appealing (Capano and Lippi 2017: 283). *Contamination* (internal/generic) stands for adopting a generic instrument with a reputation derived from its use in a different policy field (Capano and Lippi 2017: 283-84). *Hybridisation*

(external/specific) occurs under external legitimisation pressure when policy-makers adopt a constrictive new tool that is squeezed into a different policy field's logic, which thus leads to a re-framing of policy tools (Capano and Lippi 2017: 284-85). *Stratification* (external/generic) implies choosing a generic instrument due to external legitimacy concerns and is the least costly way for policy-makers to change an instrument (Capano and Lippi 2017: 285-86).

Building on these four different patterns, I ask which pattern occurred in the gender-equality program's selection. Since this article follows the programs throughout their life cycle, I will study the pattern each time the instrument was chosen, thus also illustrating that patterns can change over time, even when an instrument seems to be firmly established in the policy field (cf. Table 2).

Table 2. Patterns of Gender-equality Program Selection

[Table 2 near here]

Source: Table adapted from Capano and Lippi 2017, 282.

Using this typology helps focus on the life cycle of one policy instrument and brings back changing political opportunity structures as explanatory variables for differing selection patterns and their consequences on (de)legalisation. While Capano and Lippi suggest the four patterns are the core element of policy instrument choice, they are silent on the fact that decision-makers sometimes have to decide whether they want to continue with a chosen policy instrument, a possibility to which Terpan's (2015) concepts of legalisation and delegalisation speak. For gender-equality programs I will show that their life cycle covered all four patterns in the following order: contamination, routinisation, hybridisation, and stratification (cf. Table 2).

Contamination: Legalisation of a new policy instrument as a response to blocked hard law

The choice of a Commission communication for the first 'Community action program on the promotion of equal opportunities for women (1982-85)' was spurred by – in Capano and Lippi's terms – insiders' interests, those of the Equal Opportunities Unit of the Directorate-General for Employment (EOU). Until then, gender-equality policy had relied on directives, but this policy instrument became obsolete in the aftermath of the global economic recession and the shift towards a neoliberal consensus that hindered costly hard law (Ahrens and Abels 2017; Debusscher and Van der Vleuten 2017). Taking into account this broader political situation, the EOU – as already suggested by Capano and Lippi (2017: 283) – defended their position of power in the Directorate-General (DG) for Employment by changing to policy programs, an instrument similar in its logic to the European Social Fund managed by other units of the same DG. The EOU also justified the legitimacy of the new instrument with reference to the novel legal possibility the treaties provided to launch positive-action measures for the underrepresented sex. The gender-equality program was quite broad and generic, serving a wide range of objectives: monitoring the implementation of directives, developing new legislative proposals, widening the policy scope to women's training networks, women in information and communication technologies (ICT), equal treatment for immigrant women, and establishing positive actions with the specific focus noted in the program's title: 'the promotion of equal opportunities *for women*' (author's emphasis) (Ahrens 2002; Jacquot 2015). Simultaneously, the EOU used the program to create elements of a supranational gender-equality architecture, which still exists today, by setting up the Advisory Committee on Equal Opportunities composed of member-state representatives in charge of equal opportunities (Hoskyns 2000).

With the second action program, ‘Equal Opportunities for women. Medium-term Community program 1986-90’, the EOU further institutionalised gender-equality programs after a ‘patching-up process’ (Capano and Lippi 2017: 284) using distinct features from the ESF program, while many goals and actions, such as monitoring directives and positive actions, remained the same. The EOU extended the program scope to include transnational projects on reconciling professional and private life. The EOU also utilized the program to include other actors, resulting in the establishment of the largest umbrella organisation of national women’s organisations in Europe, the European Women’s Lobby (EWL) (Hoskyns 2000). Furthermore, the Commission communication was combined with a more binding Council resolution, probably inspired by the revived integration enabled by the Single European Act 1986.

The consolidation of gender-equality programs as an instrument then continued, again using Council resolutions as the legal form for the ‘Third medium-term Community action program on equal opportunities for women and men (1991-95)’. Covering new topics such as women in decision-making and the equal participation of women in economic and social life, this program extended its goals beyond employment policies. It also introduced Commission-led transnational programs, and the EOU successfully used it to launch further transnational networks. Despite the program’s use of the same legal form, its title, ‘equal opportunities *for women and men*’ (author’s emphasis), signalled an understanding of women as being in need of structural support rather than suggesting they are a deficient group of workers (Ahrens 2002). As a consequence, the programs presented equal-opportunity policies, including positive-action measures, as a crucial element of economic and structural policies within the then-developing idea of ‘Social Europe’ (Hoskyns 2000).

Routinisation: Continuing legalisation of gender-equality programs

With the 'Fourth medium-term Community action program on equal opportunities for men and women (1996 to 2000)', gender-equality programs became routinized and experienced an important upgrade in the form of a Council decision. This upgrade was done in the context of the Beijing UN World Conference of Women in 1995 and its Platform for Action, which put forward gender mainstreaming as a major gender-equality policy strategy (Jacquot 2015). In the Treaty of Maastricht, social policy also finally became part of the EU legal order. The Commission harnessed the Council decision as an instrument to extend policy issues to include reconciliation, the redistribution of paid and unpaid work, and targeting disadvantaged and marginalized women (Hoskyns 2000). Moreover, it put the EOU in the position of moderating (instead of managing) the impressive number of sixty-nine sub-programs that covered a broad diversity of subjects in the member states. Simultaneously, the Commission established a variety of reporting obligations for member states, for instance on implementing gender mainstreaming in the EU structural funds and on national best practices in gender-equality policies, an obligation that helped the Commission compile an annual 'Report on Equality between Women and Men'[3] (Ahrens 2002). With this move, the EOU arrived at a stage where programs ran unquestioned. The EOU deliberatively used policy programs as a tool to create their own supranational gender regime that helped coordinate member states' policies through best-practice exchange and transnational projects.

The routinisation of the policy instrument continued with the Council decision for a 'Program relating to the Community framework strategy on gender equality (2001-

[3] 'Report on Progress on Equality between Women and Men' from 2010 on.

2005)' accompanied by the Commission communication 'Towards a Community framework strategy on gender equality 2001-2005'. Using these two different legal forms, the Commission had split up its policy program into a so-called framework strategy and an (operative) action program. They became two separate but intertwined instruments, each with the political goal of implementing gender mainstreaming and positive action in order to transform structures and promote gender equality in- and outside the Commission. Once more, the legal form made it possible to broaden policy issues. And for the first time it covered gender inequalities beyond (and not directly connected to) social policy and the labour market, for instance gender equality as an indicator of democracy and also the issue of combating gender-based violence. In addition, the Commission communication stipulated that the topics involved should be integrated into the EU's external relations, thereby extending the scope of gender-equality policy considerably. The action program set up through the Council decision helped launch transnational policy networks, and the EOU started developing indicators, benchmarks, and monitoring mechanisms to measure progress. According to my interviews, the intertwined framework strategy and the action program functioned as catalysts in involving a high number of actors far beyond the Commission in its gender-equality programs, with trade unions and (national) women's organisations as core actors alongside public administration officials (Ahrens 2018).

The split of the policy's legal form allowed for a two-tier strategy that considerably improved gender-equality policy compared to the previous programs. While further institutionalising the action program as a means of creating a common supranational gender regime in the policy fields that member states had already agreed upon in primary legislation, such as employment and social policy, the Commission communication also functioned as a tool to extend the responsibilities and scope of

gender-equality policy. The shift was also visible in the title, which changed from 'equal opportunities' to 'gender equality' and to my interviewees thereby marked a more comprehensive understanding of gendered inequalities and the way gender is constructed in society. Likewise, the framework strategy strongly framed gender equality as a question of democracy, as stipulated by the formulated goal 'of all citizens women and men alike to participate and be represented equally in the economy, in decision-making, and in social, cultural and civil life' (European Commission 2000: 2). By splitting the policy up into a Council decision and a Commission communication, the Commission was also able to address a broad range of EU institutions, including the EP, the European Committee of the Regions, and the European Economic and Social Committee. With the action programs, the Commission successfully established supranational and multi-level gender-equality policy networks committed to exploiting the narrow legal possibilities to introduce innovative measures and legislative proposals (Hoskyns 2000).

As the next section highlights, this constant upgrading of policy programs did not continue. Despite the fact that programs had been institutionalised as an instrument and that gender expertise had been assembled in the form of networks, the legal form and function of programs was considerably downgraded after the end of the fifth program.

Hybridisation: From member-state agreement to Commission working level

The EOU profoundly changed its gender-equality programs with the sixth edition, the 'Roadmap for equality between women and men 2006-2010', which delegalised it to solely a Commission communication. The title already visibly changed focus by switching back from 'gender equality' to the more binary 'women and men', a move which, according to my interviewees, the EP's Committee on Women's Rights and

Gender Equality (FEMM) and the EWL had called for to make women more visible again (Ahrens 2018). To the surprise of FEMM and EWL, the EOU of DG Employment proposed a program without any budget or plans for member-state activities, although a group of member states did at that time adopt a gender-equality pact.[4] DG Employment decided to finance some actions through PROGRESS, a policy program which, aside from gender equality, also covered employment, social inclusion and protection, working conditions, and anti-discrimination. Control over the policy budget thus manoeuvred away from gender-equality policy actors to employment policy actors and later in 2010 to the anti-discrimination section of DG Justice (Ahrens 2018).

Aside from not having any budget, the Roadmap was the first gender-equality program with which the EOU did not propose new legislation, mainly because new legislation seemed out of the question after the already highly contested anti-discrimination directives of the early 2000s (Van der Vleuten 2007). The Roadmap also included no actions directly involving actors beyond the Commission, such as member states, social partners, or NGOs. My interviews strongly suggest that the Commission used the legal form of Commission communication to keep other actors at a distance and thereby weakened the previous networks. Commission interviewees stressed that the changed process was meant as a step in fostering gender mainstreaming in all DGs, yet the change resulted in a time-consuming process. With regards to the EU member states, the interviews suggest the Commission was aware it lacked the power to push the Council and Parliament into adopting a policy program the way it had in previous years, so it had to change the policy instrument into one only covering its own activities (Ahrens 2018).

[4] 'European Pact for Gender Equality', Cf. Annex II, Brussels European Council 23rd/24th March 2006 - Presidency Conclusions. Published 5th May 2006, 7775/1/06 REV1.

The seventh policy program, named 'Strategy for equality between women and men 2010-2015', followed a similar path as the Roadmap: policy issues stagnated, as did the scope of accountability and monitoring. The policy program focused on describing the situation of women and men, not even mentioning the different impact of the financial and economic crisis on the economic and employment situations of women and men (Karamessini and Rubery 2013). In the newly fraught political context, the Council dismissed gender equality for being 'too expensive' during a severe economic crisis, a crisis that resulted in a shift to putting economic issues firmly before social issues (Debusscher and Van der Vleuten 2017: 18). Furthermore, the new program coincided with moving the responsibility for gender-equality policy from DG Employment to DG Justice, and thereby to a policy context receptive to reactive human-rights-focused anti-discrimination policy instead of the previous social-policy emphasis on pro-active gender-equality policies by implementing gender mainstreaming as a political strategy (Debusscher and Van der Vleuten 2017; Hubert and Stratigaki 2016; Jacquot 2015). The possibilities of one DG influencing another DG are rather limited (Hartlapp et al. 2013), and this meant that the Commission officers who had worked on the strategy before 2010 were no longer in charge of this policy field and could not support further development. This has moved gender-equality policy away from social policies, also causing a loss of expertise on gender-equality programs as policy instruments. Around this time, important EU policy programs like Horizon 2020, the European Social Fund, the Rights, Equality, and Citizenship Programme, and Europe's Program for Small and Medium-sized Enterprises (COSME) were successively synchronized to the same timeline; they all have a program span of 2014 to 2020. DG Justice did not weave in gender-equality programs and instead further delegalised them.

Stratification: Delegalising soft-law policy programs to non-legal norms

Starting with the Roadmap, the continuous downgrading of policy programs was noticed by other gender-equality actors. When there were rumours in early 2015 that the Commission was undecided about adopting a new gender-equality program, supranational gender-equality actors sprang in action. The EWL started a Europe-wide campaign, not only for the continuation of the programs, but also for their extension and for a greater commitment from the EU institutions (European Women's Lobby 2015). The FEMM Committee contributed to the debate by adopting the 'Report on the EU Strategy for equality between women and men post -2015' (European Parliament 2015). Nationalist conservative groups tried to prevent its adoption, but after a heated debate it passed in plenary. Simultaneously, twenty national gender-equality ministers[5] stressed the importance of a renewed Commission policy program, thereby setting the stage for debates among core supranational gender-equality actors (die Standard 2015).

The external pressure led DG Justice to choose the 'simplest, least costly way in which decision makers can change the existing set of instruments' (Capano and Lippi 2017: 285), agreeing on using a staff working document, which has the lowest status of all EU documents, when adopting the 'Strategic engagement for gender equality (2016-2019)'. Despite the pressure from the EP, member states, and civil society, the Commission decided not to proceed with policy programs in the legal form of Commission communications and instead delegalized the policy program to a non-legal norm, an internal staff working document that was adopted without approval by the College of Commissioners. The resulting Strategic Engagement might mean the end of gender-equality programs as a policy instrument, as it fully relies on the self-

[5] For gender equality there is no formal Council formation.

engagement of the individual Commission civil servants in charge of the listed activities. The legal form of a staff working document also means there is less transparency in, or control over, the program's implementation by the EP or the member states.

Conclusion

This article set out to analyse policy programs as a specific kind of policy instrument, using the case of gender equality to illustrate how actors select different instruments due to the changing political context. I combined Terpan's (2015) concept of (de)legalisation with Capano and Lippi's (2017) analytical framework for identifying patterns of policy-instrument selection in gender-equality policy. I suggested that these patterns do not necessarily stick once a policy instrument is chosen, as they change depending on the policy-making context, with different patterns occurring at different times while an instrument is (de)legalised. I did so by analysing gender-equality programs from 1982 onwards, categorizing each selection process according to the four patterns developed by Capano and Lippi.

After starting the first policy programs with Commission communications, the second set of programs were adopted as decisions by the Council of Ministers. The Commission adopted the more recent programs in the form of communications, moving outside soft law in the latest case, which came in the form of a staff working document. While the initial step of turning to policy programs instead of hard law allowed for broadening the policy scope and going beyond employment policies, the (re)turn to Commission communications functioned as a filter for the Commission to external actors to the Commission.

Lascoumes and Le Galès (2007) found that actors choose instruments because they suit their institutional routines and everyday working life, not because they think

another instrument would fulfil their policy goals in a better way. The legal forms chosen for gender-equality programs follow this logic, as they changed depending on the political context. While the first programs were constructed with the purpose of overcoming member states' blocking of EU gender-equality policy, the last ones were delegalised while moving the policy field from DG Employment to DG Justice. This move detached the instrument from its original policy domain and caused a loss of expertise on gender-equality programs as policy instruments. While the factor of DG move is clearly determinable, the article reaches its limits in testing the role of other contextual elements such as a loss of power of other supranational gender-equality actors.

Studying the (de)legalisation processes of programs adds to our theoretical understanding of the evolution of EU norms and particularly the role the Commission plays in them. While nowadays the majority of soft law is intergovernmental-oriented and thereby out of reach for the EP and the European Court of Justice (Terpan 2015, 88), this analysis of gender-equality programs illustrates that the Commission has the power to also maneuver soft law out of member states' influence by delegalizing it, since the Commission steers the political agenda and also decides which hard or soft law to use. The Council (together with the EP) can reject hard law in the form of directives, but – as this article shows – the member states have no tool or power to pressure the Commission into proposing a particular legal form for a policy instrument if it prefers to stick or shift to another one or if it decides to downgrade an instrument. Studying policy instruments reveals what is at stake politically; it reveals 'power relations associated to instruments and issues of legitimacy, politicization, or depoliticization associated with different policy instruments' (Lascoumes and Le Galès 2007: 4).

While hard law is often considered a superior form of EU integration, this article demonstrates that soft law brings advantages not only for member states reluctant to commit to hard law, but also for the Commission, which can thus retain the power to design policy instruments that suit its interests. By choosing different legal forms, the Commission decides both when and how to (de)legalise policy instruments and who gets access to soft law during the integration process. Simultaneously, since the programs got so institutionalised, the Commission cannot fully discard them, as other stakeholders and institutions expect a policy program. The European Commission exploited gender-equality programs as a specific soft-law tool to deepen and widen gender-equality policy when the Council lacked the political will to push forward gender-equality issues. In the beginning, the Commission justified the creation of policy programs with the legal possibility to launch positive-action measures for the underrepresented sex. The Commission used the first programs as their tool to gain responsibility over policy issues that were previously handled nationally. The programs became institutionalised and independent soft-law tools in social policy for quite some time. Then, changes in the political environment impacted the policy programs, and the Commission adjusted the function of policy programs accordingly, thereby making full use of the flexibility of soft-law tools and its own role as agenda-setter.

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